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File No. Abk Licenses II/47

Legal Department.

B. **BRANCH**

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Subject:

Licenses under the Bombay

P-16

Abkari Act, 1878

File No. Abk Licenses II/47

291-B

C O N T E N T S.

Legal Department File No. Abk Licence II/47.

Sr. No.	Compilation No.	Subject.	Pages.
		The Bombay Abkari Act, 1878.	
1.	U.R. to R.D. No.7265 dated 15/7/47.	Draft permit forms.	1 - 10.
2.	U.R. to R.D. No.9751 dated 6/10/47.	Scrutiny of Licence forms -- remarks on--	11 - 16.

S.C.R.11/5/
5C.

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2/11

Office of the R.L.A.

A revised of the Permit is sent herewith.

2. The R.D. draft form of the Permit at pages 13-15 ante refers to the possession of "spirits", but since permit is to be given for the possession of rum only, the revised form refers only to rum.

3. Condition 2 in the R.D. draft that the permit-holder shall obtain spirits under cover of transport passes is unnecessary in view of the opening part of the revised draft in which it is made clear that the permit is given subject to the provisions of the Bombay Abkari Act, 1878. Under that Act, it is necessary to take out a pass for the transport of intoxicants exceeding prescribed quantities.

4. Condition 10 of the revised draft which corresponds to condition 9 of the R.D. draft requires that the accounts, counterfoils of requisitions, permits and passes shall be preserved by the permit-holders for one year after the expiry of the period of the permit. The penalty prescribed for breach of any condition in the permit is cancellation or suspension of the permit. R.D. should, therefore, consider how far it would be practicable to enforce a condition in the permit, which requires the permit-holder to do something after the period of the permit. (Cf. R.L.A's opinion No. 271, dated 8-1-1940).

5. Before the permit is granted in the proposed form, the Commissioner, it is presumed, will take action under section 30 of the Act for prescribing the necessary form.

6. The draft form of the Bond at pages 17-18, as amended, is in order.

(Sd) D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 7285, dated the 15th July 1947.

E.K.N.11/5/

4 C.

Government Cost of Arms.

Permit No. .....

PERMIT FOR POSSESSION BY TOBACCO MANUFACTURERS OF RUM IN EXCESS OF THE LIMIT OF RETAIL SALE DETERMINED UNDER SECTION 17 OF THE BOMBAY ABKARI ACT, 1878 (Bom. V of 1878).

Permit is hereby granted to.....
.....of .....
(hereinafter called "the permit-holder"), on payment of a fee of Rs. 10/- in advance, authorising him to have in his possession under and subject to the provisions of the Bombay Abkari Act, 1878 (Bom. V of 1878), and the rules and orders made thereunder and the conditions of this permit, rum in excess of the limit of retail sale for the purpose of using the same in the manufacture of tobacco during the period specified below at his premises situated at..
.....(here inafter referred to as "the said premises").

This permit is granted subject to the following conditions, namely:-

1. This permit shall remain in force form.....
.....to ..... (both days inclusive).

2. The permit-holder shall not use rum for any purpose except for flavouring tobacco preparations and in curing tobacco leaves.

3. The permit-holder shall not obtain his supply of rum except on a requisiton countersigned by an Abkari Officer duly authorised in that behalf.

4. The permit-holder shall not have in his possession more than ..... bulk gallons of rum at any one time.

5. All the rum received by the permit-holder shall be kept in a place in the said premises approved by the Collector under lock and key and all issues of rum from the said place shall be made in the presence of the permit-holder or a person duly authorised by him in that behalf.

6. The permit-holder shall not allow any operation in the manufacture of tobacco which involves the use of rum to be conducted in the said premises except in his own presence or in the presence of any other person duly authorised by him in that behalf.

7. The permit-holder shall keep on the said premises a visit book, paged and sealed with the seal of the Collector, in which visiting officers may record their remarks when inspecting the said premises.

8. (1) The permit holder shall maintain from day to day a clear and true account in the form annexed hereto or in such other form as the Commissioner may from time to time prescri of the quantity of rum received, used and of the balance held in stock by him on the said premises. The account shal be kept in a book bound, paged and sealed with the seal of t Collector.

(2) The permit-holder shall keep along with the account book, the counterfoils of requisitions and transport passes relating to rum received at the said premises.

(3) The permit-holder shall submit to the Collector on or before the 7th day of each month an account of rum recei and used by him during the previous month.

(4) The permit-holder shall also furnish to the Collector such other information relating to the subject-matter of this permit as the Collector may from time to time require.

9. The said premises, the rum kept therein and the account books, counterfoils of requisitions, transport passes referred to in condition 8 and this permit shall at all times be open to inspection by the Collector, or any Abkari or Police Officer not lower in rank than a Sub-Inspector or by any other officer who may be deputed or authorised by the Collector or the Superintendent of Excise in this behalf.

10. The accounts, counterfoils of requisitons transport passes referred to in condition 8 and the permit shall be preserved by the permit-holder for one year after the expiry of the period of this permit.

11. The permit-holder shall execute a bond for such amount as the Collector deems fit for the proper observance of the conditions of this permit.

12. The permit-holder shall not do anything which would have the effect of directly or indirectly defeating or frustrating the policy of prohibition adopted by the Government of Bombay.

13. The permit-holder shall, in the event of cancellation of this permit during its currency or non-renequal on its expiry forthwith hand over to the officer in charge of the nearest Government liquor warehouse, the whole of the unused stock of rum.

14. This permit may be suspended or cancelled by the Collector in accordance with the provisions of section 32 of the Bombay Abkari Act, 1878.

Granted this ..... day of .....

194 .

Seal of the

Collector. Collector of.....

Form of Accounts to be maintained by Permit-Holders for the possession of rum.

(Here enter the form at page 19 as slightly amended).

Office of the R.L.A.

Licence Form 180(a):- (a) Condition 8 - For the words " to be retained as required" substitute "strength to be filled in by the Collector".

Since clause (c) of condition 8 is sought to be deleted, the Revenue Department is requested to consider whether the last two columns of Schedule E to the license require to be require to be deleted or any other change is necessary therein.

(b) Condition 9 - This condition may be recast as follows:-

"9 Source of Supply and fixing of ration - (1) The licensee shall not obtain his supply of country spirit except from the Distillery / Bonded Warehouse at .... provided that in the event of the Bonded Warehouse being closed or removed to any other place during the currency of this licence, the licensee shall obtain his supply of country spirit from a bonded warehouse nearest his shop and the closure or removal of any bonded warehouse shall not entitle the licensee to claim any compensation or refund of licence fee.

(2) The licensee shall be supplied, within the ration allotted to him, with plain and masala liquors of the strengths allowed to be sold at the shop. The stoppage or suspension during the licence period of supply of masala liquor either in quarts and pints or in bulk shall not give the licensee any claim for compensation or refund of licence fee.

(3) The Collector shall fix the annual ration, and may also fix a quarterly ration, of country spirit;

Provided that the Collector may increase the annual ration fixed by him.

(3) If the licensee fails to sell his full quarterly ration of country spirit, and there is a balance, the Collector shall be entitled-

(a) to withdraw and transfer to other licensees the balance remaining unsold at the end of each of the preceding three quarters; and

(b) to reduce his ration for the fourth quarter on the basis of the sales for the preceding three quarters.

EXPLANATION - 'Balance' means the difference between the quantity of quarterly ration of country spirit fixed by the Collector and the actual sales therefore for such quarter.

(5) The licensee whose ration is increased on account of transfer of balance under clause (4) shall pay such additional license fee as the Collector may fix.

(6) The licensee shall not be entitled to any compensation or refund of license fee in the event of any transfer of the balance or reduction of ration of country spirit under clause (4)".

The scheme appears to be to supply the licensee with quarterly ration of country spirit. It is therefore not necessary to provide for supply of monthly ration of country spirit. Provision regarding monthly ration has therefore been deleted in the revised draft. R.D. is requested to verify whether revised condition 9, particularly clauses (4) thereof in accordance with its intention.

(c) Condition 25 - The bracket and figure "(1)" should be inserted before the words "The licensee" i.e. at the beginning of the condition and not before item (a) as proposed by the Revenue Department. Clause (a) of this condition as so renumbered may be replaced by the following:-

"(a) on such days as may be fixed by the Collector

from time to time".

The following clause may be added to condition 25(1) - "(2) A calander showing the days fixed for closure of shop under sub-clause (a) of clause I shall always be hung up in a conspicuous place in the shop".

(d) Schedule F - It is presumed that only the figures and letters "85°U.P. 40°U.P." obtaining against Masala Spirit are to be deleted (Cf. first amendment to condition 8 at page 3 ante).

(e) It is presumed that in view of para. 7 of the Commissioner's letter quoted in G.R.R.D.No.6747/39, dated the 23rd January 1947, no amendment of condition 13 is necessary.

(f) The Revenue Department may consider whether the figures "16" in condition 23 and "18" in condition 18 of this form may not be changed to "21" in view of the amendment of section 17A of the Bombay Abkari Act, 1878, by section 9 of Bombay Act 29 of 1947.

(2) License Form No. 181 (E) - (a) Conditions 2 and 17 - No remarks.

(b) Condition 20 - The brackets and figure "(1)" should be inserted before the words "The licensee" i.e. at the beginning of the condition andclause (a) of this condition as so renumbered may be replaced by the following, namely:-

"(a) on such days as may be fixed by the Collector from time to time."

The following new clause may be added to this condition, namely:-

"(2) A calender showing the days fixed for closure of shop under sub-clause (a) of clause (1) shall always be hung up in a conspicuous place in the shop".

(c) Conditions 18 and 13 - Vide remarks in para.1(f) above.

3. License Form No. 182 ~~181~~ (E) - (a) Preamble - No remarks.

(b) Condition 4 - There is no legal objection to deleting

the portion enclosed by daggers. The foot-note however need not be deleted (vide preamble).

(c) Condition 13 - No remarks.

(d) Condition 16 - The brackets and figure "(1)" should be inserted before the words "The licensee" i.e. at the beginning of this condition and clause (a) of this condition as so renumbered may be replaced by the following:-

(a) on such days as may be fixed by the Collector from time to time.

The following new clause may be added to this condition, namely:-

"(2) A calender showing the days of fixed for closure of shop under sub-clause (a) of clause I shall shall always be hung up in a conspicuous place in the booth".

(e) Condition 17 - The word "and" should be transposed after the word "sold" as shown in the license.

(f) Condition 24 - For the first sentence i.e. for the words beginning with " s the licensee" and ending with "beyond the said period" the following may be substituted, namely:-

"The licensee, his heirs, legal representatives or assigns shall have no claim whatsoever to the continuance or renewal this license after the expiry of the period of which it is granted".

(g) Conditions 14 and 9 - Vide remarks in para. 1(f) above.

4. License Form No. 184 (e) - (a) Condition 18 - There is no legal objection to the proposed amendments.

(b) New condition 18A - This may be recast as follows - 18A(1) The licensee shall close the said shop on such days as may be fixed by the Collector from time to time (2) A calender showing the days fixed for closure of shop under clause (1) shall always be hung up in a conspicuous placein the said shop".

(c) Schedule D. - No, remarks.

(d) Conditions 17 and 11 - Vide remarks in para.1(f).

5. License Form No. 183 (e) - Preamble and Condition 3. The amendments are free from any objection. The foot note with may not be deleted (vide condition2).

(b) Condition 22 - This may be recast on the lines

suggested in para. 3(f) above.

(c) Condition 9 - Vide remarks in para. 1(f).

6. License Form No. 15 (c) - (a) Preamble - No remarks.

(b) Condition 1 - Instead of this proposed addition at the end of this condition, it would be more appropriate to insert the following after the words "One hundred or less" where they occur first, namely:-

", or if the license is granted for a period not exceeding six months", and

after the words "One hundred" where they occur for the second time, the following may be inserted, namely:- "or the license is granted for a period exceeding six months".

(c) Condition 9 - No remarks.

(d) New condition 15A - It may be recast as follows:- "15A(1) The licensee shall close the said shop on such days as may be fixed by the Collector from time to time. (2) A calender showing the days fixed for closure of shop under clause (1) shall always be hung up in a conspicuous place in the shop".

(e) Condition 16 and not 15 as stated at page 7 ante - No remarks.

(f) Conditions 20 and 21 - No remarks.

(g) Condition 25 (renumbered) - The first sentence of this condition may be recast on the flines suggested in para. 3(f).

(Sd) D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9751 dated the 6th October 1947.